

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Crl.MC.No. 2241 of 2007()

CC.2204/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER:

A. IBRAHIMKUTTY, S/O.ABOOBACKER KUNJU,
THONDALIL VEEDU, AYIKUNNATHU MURI,
KUNNATHUR TALUK, SOORANADU SOUTH VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. SUB INSPECTOR OF POLICE,
SOORANADU POLICE STATION.

BY P.P. SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CrI.M.C. NO. 2241 OF 2007

Dated this the 12th day of July, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution under Sec.138 of the Negotiable Instruments Act. He preferred an appeal. Before preferring the appeal, he filed an application before the learned Magistrate under Sec.389(3) of the Cr.P.C. The learned Magistrate directed under Sec.389(3) of the Cr.P.C. that the petitioner must deposit an amount of Rs.50,000/- as cash security. The amount was deposited. The petitioner preferred an appeal. In the appeal, the learned Sessions Judge suspended the sentence on condition that the petitioner executes a bond for Rs.40,000/- with two solvent sureties. The learned Sessions Judge did not insist on deposit of any further amount. In view of the order of the learned Sessions Judge, the petitioner approached the learned Magistrate for release of

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the amount of Rs.50,000/- deposited by him. The learned Magistrate, by the impugned order – Annexure-A3, did not accept the request and rejected the petition. The petitioner claims to be aggrieved by the said order – Annexure-A3.

2. The learned Sessions Judge had directed the suspension of the sentence on condition that a bond must be executed. No direction for payment appears to have been made. Obviously, the learned Sessions Judge appears to have been influenced by the fact that already an amount of Rs.50,000/- is lying in deposit as directed by learned Magistrate while passing the order under Sec.389(3) of the Cr.P.C. If the petitioner wants to get release of the said amount, he must certainly approach the learned Sessions Judge who passed Annexure-A2 order and seek a direction of the appellate court for release of the amount. The learned Sessions Judge will then consider whether the amount in deposit is liable to be released.

3. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. To Judge

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